S.B. CIVIL WRIT PETITION NO.4181/2004

Taslimudeen and another vs. State of Raj. and others.

Date : 21.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. DD Chitlangi, for the petitioner.

Mr. Vikas Balia) for the respondents.
Mr. AK Singh)

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Heard learned counsel for the parties.

The brief facts of the case are that a lease deed was issued by the UIT, Bikaner in favour of respondent no.4 Fakrudeen on 8.7.1988 and thereafter, the land was given to him by patta dated 11.7.1996. The patta was registered on 15.7.1996.

It appears from the facts that two sons of respondent no.4 – present petitioners challenged the patta of the respondent no.4 in the year 2003 and they submitted that in fact, their father (respondent no.4) illegally obtained the patta of the land in question and this land could not have been regularised in favour of their father as he had a residential house already with him. The UIT, Bikaner by resolution no.7 dated 15/16.7.2003 decided to cancel the patta granted in favour of respondent no.4 and thereafter issued a letter to the respondent no.4 on 18.10.2003 conveying him that by resolution no.7 dated 15/16.7.2003, the lease, license and lease deed have been cancelled.

Being aggrieved by resolution no.7 dated 15/16.7.2003, the respondent no.4 preferred a revision petition before the Divisional Commissioner, Bikaner. In revision proceedings, the present petitioners submitted an application for being impleaded as party on the ground that the lease license was cancelled at their instance. The petitioners' application was dismissed by the Divisional Commissioner and that order was never challenged by the petitioners and, therefore, ultimately, the revision petition was decided by the Divisional Commissioner vide order dated 24.8.2004 while observing that the lease license was granted to the respondent no.4 in the year 1988 and thereafter, patta was issued in the year 1996 and that patta has already been registered, therefore, the UIT Bikaner had no jurisdiction to cancel the registered lease deed. The Divisional Commissioner also observed that even no suit for cancellation has been filed, which could have been filed, within three years from the date of execution of the deed and, therefore, the resolution of the UIT is illegal and of no effect.

The petitioners – sons of the respondent no.4 have preferred this writ petition to challenge the order of Divisional Commissioner dated 24.8.2004.

According to learned counsel for the petitioners, the Divisional Commissioner had no jurisdiction under Section 300 of the Rajasthan Municipalities Act, 1959 (for short 'the Act of 1959') to entertain any revision petition to

examine the validity of resolution no.7 dated 15/16.7.2003. It is also submitted that the petitioners' father has a residential house and, therefore, he was not eligible to have the patta issued in his favour.

Learned counsel appearing for respondent no.4 supported the order of the learned Divisional Commissioner dated 24.10.2004 and also submitted that resolution no.7 dated 15/16.7.2003 is of no effect because of the simple reason that a registered document cannot be cancelled unilaterally by one of the executant of the document and further a registered document cannot be cancelled by carrying a resolution only. It is also submitted that there was no reason for UIT to entertain such an objection that too from the respondent no.4's son and further it has been filed after inordinate delay of about 15 years from the date of lease and about 7 years from the date of grant of lease.

A reply has been filed on behalf of UIT, Bikaner and it has been submitted that the petitioner no.1 applied for regularisation of the plot in question in the year 1982 and that application of the petitioner no.1 was rejected by the UIT in the year 1982 specifically on 21.1.1982 after holding that no proof has been submitted by the petitioner in support of his possession and that order has not been challenged by the petitioner no.1.

I have considered the submissions of learned counsel for the parties and perused the record.

In the writ petition, the age of the petitioner no.1 has been shown as 43 years whereas that of the petitioner no.2 as 41 years. Therefore, the petitioner no.1 in the year 1988 was of 18 years of age and the petitioner no.2 was of 16 years of age. Learned counsel for the petitioners failed to point out that what was the reasons of these two persons at the age of 18 and 16 years to grab a government land when their father had a residential house with him.

It appears from Annex.R/1 that in the application, the petitioner no.1 clearly disclosed the particulars of his family members wherein he has shown himself at S.No.1 and thereafter gave the name of his family members which included his father – respondent no.4 also. Therefore, the claim of the petitioners that they in their own right were in occupation of the plot in dispute stands fully falsified by their own document. The petitioners' alleged claim which might have been submitted to get the regularisation of the plot in the name of the petitioner no.1 but at the same time, now the petitioner no.2, his own brother, has joined hands with him without explaining when the petitioner no.1, if was claiming exclusive possession over the land in dispute in the year 1982, then how he can claim possession particularly when his name is not mentioned in the list of the family members of the petitioner no.1. Be it as it may be. These additional facts are also relevant but even without that, there was no reason for the UIT, Bikaner to entertain the objections of the petitioners against the grant of patta or lease deed by the UIT itself and the resolution no.7 dated 15/16.7.2003 of the UIT on the face

of it is wholly without jurisdiction as it appears from resolution no.7 dated 15/16.7.2003 that the UIT passed the resolution to cancel the registered deed on the basis of the allegations levelled by the petitioners who are sons of the respondent no.4 and who himself claim his possession over the land in dispute with his father and his claim for regularisation of the land was dismissed by the UIT and all these facts have not been even considered by the UIT.

So far as the contention of the learned counsel for the petitioners that the Divisional Commissioner had no jurisdiction to entertain the revision petition against the resolution no.7 dated 15/16.7.2003 is concerned, I need not to decide this issue simply because of the reason that the petitioners have suppressed important material facts from this Court and seeking a relief which is against equity and further because of the reason that in case the order dated 24.8.2004 is set aside, it will revive the wholly without jurisdiction decision of UIT, Bikaner and wholly without jurisdiction order dated 18.10.2003 and further even if these orders remain as it is, the document which has not been cancelled by any registered deed or by mutual consent or by challenging it in Court, will remain unaffected even if the UIT's resolution no.7 dated 15/16.7.2003 and order dated 18.10.2003 are kept as it is because of the reason that the orders as have been passed cannot cancel the deed which has been executed by the UIT.

I also found force in the submission of learned counsel

for the respondents that once the petitioners' application for being impleaded has been rejected by the Divisional Commissioner and that order has not been challenged by the petitioners in time and even in this writ petition, then they in fact have abandoned their any objection which he raised at particular point of time.

In view of the above discussion, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya